

107TH CONGRESS  
2D SESSION

# H. R. 3640

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to ensure that individual account plans protect workers by limiting the amount of employer stock each worker may hold and encouraging diversification of investment of plan assets, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2002

Mr. PASCRELL introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to ensure that individual account plans protect workers by limiting the amount of employer stock each worker may hold and encouraging diversification of investment of plan assets, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Pension Protection and  
3 Diversification Act of 2002”.

4 **SEC. 2. 20-PERCENT LIMITATION ON EMPLOYER STOCK**  
5 **AND REAL PROPERTY HELD BY PARTICIPANT**  
6 **IN CERTAIN INDIVIDUAL ACCOUNT PLANS.**

7 (a) IN GENERAL.—Section 407 of the Employee Re-  
8 tirement Income Security Act of 1974 (29 U.S.C. 1107)  
9 is amended by adding at the end the following:

10 “(g) DIVERSIFICATION REQUIREMENTS APPLICABLE  
11 TO CERTAIN INDIVIDUAL ACCOUNT PLANS.—

12 “(1) IN GENERAL.—An applicable individual ac-  
13 count plan shall not be treated as an eligible indi-  
14 vidual account plan (as defined in subsection (d)(3))  
15 unless the plan meets—

16 “(A) the acquisition and holding require-  
17 ments of paragraph (2), and

18 “(B) the divestment requirement of para-  
19 graph (3).

20 “(2) ACQUISITION AND HOLDING REQUIRE-  
21 MENTS.—A plan meets the requirements of this  
22 paragraph only if—

23 “(A) the plan may not acquire qualifying  
24 employer securities or qualifying employer real  
25 property to the extent that, immediately after  
26 the acquisition, the fair market value of all

1           qualifying employer securities and qualifying  
2           employer real property allocated (or to be allo-  
3           cated) to any participant or beneficiary would  
4           exceed 20 percent of the fair market value of all  
5           assets allocated (or to be allocated) to such par-  
6           ticipant or beneficiary under the plan, and

7           “(B) as of the last day of any calendar  
8           quarter, the fair market value of all qualifying  
9           employer securities and qualifying employer real  
10          property allocated (or to be allocated) to any  
11          participant or beneficiary does not exceed 20  
12          percent of the fair market value of all assets al-  
13          located (or to be allocated) to such participant  
14          or beneficiary.

15          “(3) OPPORTUNITY FOR EMPLOYEE TO DIVEST  
16          EMPLOYER SECURITIES.—A plan meets the require-  
17          ments of this paragraph if each employee who has  
18          a nonforfeitable right to 100 percent of the employ-  
19          ee’s accrued benefit derived from employer contribu-  
20          tions may, at any time after the 90th day following  
21          the allocation of any qualifying employer securities  
22          or qualifying employer real property to the employee  
23          under the plan, direct the plan to divest the employ-  
24          ee’s account of such securities or property and rein-  
25          vest an equivalent amount in other assets.

1 “(4) DIVESTITURE.—

2 “(A) IN GENERAL.—The Secretary shall  
3 prescribe regulations under which—

4 “(i) a plan is given a reasonable pe-  
5 riod of time to divest itself of qualifying  
6 employer securities and qualifying em-  
7 ployer real property in order to meet the  
8 requirements of this subsection, and

9 “(ii) in the case of a plan in which a  
10 participant or beneficiary exercises control  
11 over assets in an account, the participant  
12 is given reasonable notice of the require-  
13 ment, and a reasonable period of time, to  
14 make such divestiture.

15 “(B) WAIVER IN DE MINIMIS CASES.—The  
16 Secretary may by regulations waive the applica-  
17 tion of paragraph (2)(B) in cases where the  
18 failure with respect to any participant or bene-  
19 ficiary is de minimis and due solely to market  
20 fluctuation.

21 “(5) DEFINITIONS AND SPECIAL RULES.—For  
22 purposes of this subsection—

23 “(A) APPLICABLE INDIVIDUAL ACCOUNT  
24 PLAN.—The term ‘applicable individual account  
25 plan’ means an individual account plan other

1           than an employee stock ownership plan as de-  
2           fined in section 4975(e)(7) of the Internal Rev-  
3           enue Code of 1986.

4           “(B) AGGREGATION.—All applicable indi-  
5           vidual account plans (other than multiemployer  
6           plans) maintained by the same employer shall  
7           be treated as a single plan.

8           “(6) TRANSITION RULES.—

9           “(A) IN GENERAL.—If, as of December 31,  
10          2002, the fair market value of qualifying em-  
11          ployer securities and qualifying employer real  
12          property allocated (or to be allocated) under  
13          any plan to any one participant or beneficiary  
14          exceeds 20 percent of the fair market value of  
15          all assets so allocated (or to be allocated), the  
16          plan shall be treated as meeting the require-  
17          ments of paragraph (2)(B). This subparagraph  
18          shall cease to apply if any such securities or  
19          property are allocated after December 31,  
20          2002, to the participant or beneficiary without  
21          the requirements of paragraph (2)(A) or sub-  
22          paragraph (B) being met.

23          “(B) CONTRACTUAL REQUIREMENTS.—If  
24          qualifying employer securities or qualifying em-  
25          ployer real property are acquired after Decem-

1           ber 31, 2002, pursuant to a contract in effect  
 2           on the date of enactment of this subsection and  
 3           at all times thereafter, the fair market value of  
 4           such securities or property as of December 31,  
 5           2002, shall be taken into account under sub-  
 6           paragraph (A).”

7           (b) CONFORMING AMENDMENT.—Section 407(b)(1)  
 8   of such Act (29 U.S.C. 1107(b)(1)) is amended by striking  
 9   “Subsection (a)” and inserting “Subject to subsection (g),  
 10   subsection (a)”.

11   **SEC. 3. IMPROVEMENTS IN ABILITY OF EMPLOYEES TO DI-**  
 12                           **VERSIFY ASSETS IN ESOPS.**

13           (a) IN GENERAL.—Subparagraph (B)(iii) of section  
 14   401(a)(28) of the Internal Revenue Code of 1986 (relating  
 15   to additional requirements for employee stock ownerships  
 16   plans) is amended—

17                   (1) by striking “10 years” and inserting “5  
 18           years”, and

19                   (2) by striking “age 55” and inserting “age  
 20           35”.

21           (b) TRUSTEE-TO-TRUSTEE TRANSFER REQUIRED.—  
 22   Clause (ii) of section 401(a)(28)(B) of such Code is  
 23   amended by adding at the end the following new flush sen-  
 24   tence:

1            “In the case of a qualified participant who  
 2            has not attained the age of 55 on or before  
 3            the date of any distribution described in  
 4            subclause (I), a plan shall be treated as  
 5            meeting the requirements of subclause (I)  
 6            only if such distribution is made in the  
 7            form of a direct trustee-to-trustee transfer  
 8            to an eligible retirement plan (as defined  
 9            in paragraph (31)(D)) specified by the  
 10           participant.”

11 **SEC. 4. REDUCTION IN DEDUCTION FOR EMPLOYER**  
 12 **MATCHING CONTRIBUTIONS TO DEFINED**  
 13 **CONTRIBUTION PLANS MADE IN EMPLOYER**  
 14 **SECURITIES.**

15        Section 404(a) of the Internal Revenue Code of 1986  
 16 (relating to deduction for contributions of an employer to  
 17 an employee trust, etc.) is amended by adding at the end  
 18 the following:

19            “(12) LIMITATIONS ON DEDUCTIONS FOR EM-  
 20            PLOYER MATCHING CONTRIBUTIONS MADE IN EM-  
 21            PLOYER SECURITIES.—In the case of an employer  
 22            matching contribution of employer securities (as de-  
 23            fined in section 409(l)) to a defined contribution  
 24            plan other than an employee stock ownership plan  
 25            (as defined in section 4975(e)(7)), the amount of the

1       deduction allowed shall be equal to 50 percent of the  
2       amount allowable without regard to this paragraph.”

3   **SEC. 5. EFFECTIVE DATES.**

4       (a) IN GENERAL.—The amendments made by this  
5   Act shall apply to years beginning after December 31,  
6   2002.

7       (b) COLLECTIVE BARGAINING AGREEMENTS.—In the  
8   case of a plan maintained pursuant to one or more collec-  
9   tive bargaining agreements between employee representa-  
10   tives and one or more employers ratified by the date of  
11   the enactment of this Act, the amendments made by this  
12   Act shall not apply with respect to employees covered by  
13   any such agreement for plan years beginning before the  
14   earlier of—

15               (1) the later of—

16                       (A) the date on which the last of such col-  
17                       lective bargaining agreements terminates (de-  
18                       termined without regard to any extension there-  
19                       of on or after such date of enactment), or

20                       (B) January 1, 2003, or

21               (2) January 1, 2005.

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